LABOR LAW

FAIR LABOR STANDARDS ACT — MOTOR CARRIER ACT: WEIGHT GIVEN TO PRIOR ADMINISTRATIVE INTERPRETATION OF INTER-RELATED STATUTES

Plaintiff, who had been driver for defendant, a contract carrier of mail for the Post Office Department, seeks recovery of compensation for over-time employment under Section 207 of the Fair Labor Standards Act.[1] Defendant contends that the case falls within Section 213 (b) (1), which exempts from Section 207 those employees over whom the Interstate Commerce Commission has power to establish . . . maximum hours of service under the Motor Carrier Act, and that employees of contract carriers are designated as one such class.[2] *Held,* for the plaintiff on the basis of an I.C.C. ruling that a contract mail carrier is not subject to the Motor Carrier Act as a contract carrier.[3] *Thompson v. Daugherty,* 40 F. Supp. 279 (D. Md. 1941). In another case similarly involving these sections the court referred to a ruling of the I.C.C.[4] but held that it "independently" also found plaintiff mechanic to be within the purview of the Motor Carrier Act because his duties affected the safety of operation of vehicles in interstate commerce. *West v. Smoky Mountains Stages, Inc.,* 40 F. Supp. 296 (N. D. Ga. 1941).

It is well settled that the cardinal principle of statutory interpretation and construction is to give effect to the intent of the legislature.[5] In each of the two principal cases, the court followed the oft-stated rule that a practical or administrative construction of an ambiguous statute is entitled to great weight.[6] The court in the

[1] 52 STAT. 1060, 29 U. S. C. A. (1938).

[2] 49 STAT. 543, 49 U. S. C. A. Sec. 304 (a) (2) (1935).

[3] 3 Motor Carrier Cases 694, 697.

[4] Report in *Ex Parte* No. MC-2 and *Ex Parte* No. MC-3, Mar. 13, 1941.

[5] James v. Milwaukee, 16 Wall. 159, 21 L. Ed. 267 (1872); Wolsey v. Chapman, 101 U. S. 755, 769, 25 L. Ed. 915, 920 (1879); U. S. v. Baltimore & Ohio S. W. R. Co., 222 U. S. 8, 32 Sup. Ct. 6, 56 L. Ed. 68 (1911); The Schooner Paulina' Cargo v. U. S., 7 Cranch 52, 60, 3 L. Ed. 266, 269 (1812); Erie R. Co. v. Steinberg, 94 Ohio St. 189, 203, 113 N. E. 814, 818, L. R. A. 1917B, 787, 792 (1916); Buckman v. State, 81 Ohio St. 171, 178-179, 90 N. E. 158 (1909).

[6] 2 SUTHERLAND, STATUTORY CONSTRUCTION (2d ed. 1904) Sec. 474; Baze v. Scott, 106 F. (2d) 365 (C. C. A. Okla. 1939); Carolina Music Co. v. Query, 192 S. C. 308, 312, 6 S. E. (2d) 473, 475 (1939); Poole v. Saxon Mills, 6 S. E. (2d) 761, 764, 192 S. C. 339, 347 (1939); Broderick v. Keefe, 112 F. (2d) 293, 296 (C. C. A. R. I. 1940); *cf.* Saks v. Higgins, 111 F. (2d) 78, *affirming* 29 F. Supp. 996 (C. C. A. N. Y. 1940) ("is often highly persuasive."); Industrial Commission v. Brown, 92 Ohio St. 309, 311, 110 N. E. 744, 745 (1915); State *ex rel.* Crabbe v. Middletown Hydraulic Co., 114 Ohio St. 437, 453, 151 N. E. 653 (1926).

Thompson case gave little reason for its decision other than the interpretative ruling of the I.C.C. In the *West* case, the court indicated that it regarded the admininstrative interpretation as a factor to be considered in making its decision. Although courts have said that such determinations "afford a presumption of the meaning" [7] and "should control and be followed unless manifestly wrong," [8] the generally accepted rule is that such practical constructions are never binding upon the courts.[9] In *Magann v. Long's Baggage Transfer Co., Inc.*,[10] a contemporaneous case squarely "on all fours" with the *Thompson* case, another district court, confronted with the same I.C.C. ruling, rejected it and held that a contract mail carrier was within the Motor Carrier Act. The court carefully noted that the statement of the Commission denying its jurisdiction over contract carriers of mail in vehicles used exclusively for that purpose, was merely dictum, and clearly not binding upon the court, since the application presented to the Commission raised only the question as to its jurisdiction over carriers who transport mail along with baggage, express, and newspapers. The weight given to such rulings is due largely to the fact that they are handed down by the men charged specially with the administration or enforcement of the statute, and also because the legislature is presumed to have acquiesced in the interpretation by failing subsequently to alter the law.[11] In the principal cases this presumption is inapplicable because the statutes involved are of recent origin.[12]

This rule as to the weight of an administrative interpretation has often been used by the courts merely as a device to justify the resort to a practical interpretation by disregarding the literal mean-

[7] Midway Co. v. Eaton, 183 U. S. 602, 609, 46 L. Ed. 347, 353, 22 Sup. Ct. 261 (1902).

[8] Surgett v. Laplice, 8 How. 48, 12 L. Ed. 982 (1850).

[9] BLACK, CONSTRUCTION AND INTERPRETATION OF THE LAWS, (2 ed. 1911) p. 301-2; Sandford's Estate v. Commissioner of Internal Revenue, 308 U. S. 637, 60 Sup. Ct. 51, 60 *affirming* 109 F. (2d) 81 (1939), *cert. granted*, 307 U. S. 618, 59 Sup. Ct. 836, 83 L. Ed. 1498 (1939); Cannon v. Robertson, 32 F. (2d) 295, 299 (D. Md. 1929); U. S. v. Standard Brewery, 251 U. S. 210, 219, 64 L. Ed. 229, 235, 40 Sup. Ct. 139, 141 (1920); State *ex rel.* Gallinger v. Smith, 71 Ohio St. 13, 40, 72 N. E. 300, 306 (1904); State v. Evans, 21 Ohio App. 168, 173, 152 N. E. 776, 778 (1925) (quoting from Industrial Comm. v. Brown, n. 6 *supra*.).

[10] 39 F. Supp. 742 (W. D. Va. 1941).

[11] To have great weight, such practical construction must, as a rule, be long continued. Merritt v. Cameron, 137 U. S. 542, 552, 11 Sup. Ct. 174, 178, 34 L. Ed. 772, 775 (1890); Iselin v. U. S., 270 U. S. 245, 251, 46 Sup. Ct. 248, 250, 70 L. Ed. 566, 570 (1926); Industrial Comm. v. Brown, n. 6 *supra;* State v. Evans, n. 9 *Supra.*

[12] Fleming v. A. H. Belo Corporation, 121 F. (2d) 207, 213, 214 (C. C. A. 5th, 1941) (interpretation by Adm'r of Wage and Hour Law can be easily disapproved because not "acted upon for a number of years.").

ing of an act. This seems to be the explanation of the holding in the *Thompson* case, for if the court had followed another canon of statutory interpretation, that the intention of the legislature is to be ascertained primarily from the words used if they are plain and unambiguous,[13] an opposite result would have been reached. As pointed out in the *Magann* case, defendant is a contract carrier, and there is nothing in the express language of the Motor Carrier Act which would exclude a contract carrier of mail from its operation.

However, when such a literal interpretation leads to a result that is unreasonable or absurd, the statute should be construed according to its spirit and reason.[14] The court in the *Thompson* case argued that it would not be feasible for one under contract with the Federal Government to be subjected to regulation by the I.C.C. Nevertheless, an examination of the policy of each of these two statutes tends to refute this contention.

Congress, in the preamble to the Motor Carrier Act, declared its purpose to be the regulation of motor carrier transportation so as "to . . preserve the . . . advantages of, and foster sound economic conditions in such transportation." [15] Another section of the Act provides for regulation of "contract carriers by motor vehicle . . . with respect to . . . qualifications and maximum hours of service of employees, and safety of operation of equipment." [16] The Supreme Court in *U. S. v. American Trucking Associations, Inc.*[17] pointed out that the purpose of the Act, as evidenced from its legislative history,[18] was to insure safety of operation and held that it is confined to employees whose activities affect the safety of operation of vehicles regulated by the Act. In passing the Fair Labor Standards Act, Congress said that it was the policy of the Act to

[13] BLACK, *op. cit. supra.* note 9, at p. 51 citing Sturges v. Crowinshield, 4 Wheat. 122, 202, 4 L. Ed. 529, 550 (1819); Lemmon v. State, 77 Ohio St. 427, 437, 83 N. E. 608, 610 (1908) (criminal statute); Erie R. Co. v. Steinberg, note 5 *supra.*

[14] BLACK, *op. cit. supra* note 9, at p. 66 ciitng *In re* Matthews, 109 Fed. 603, 616 (W. D. Ark. 1901); Clare v. State, 68 Ind. 17, 25 (1879); Roberts v. State, 4 Ga. App. 207, 210, 60 S. E. 1082, 1084 (1908); Ozawa v. U. S., 260 U. S. 178, 194, 43 Sup. Ct. 65, 67, 67 L. Ed. 199, 207 (1922); State *ex rel.* Mitman v. Greene County, 94 Ohio St. 296, 302, 113 N. E. 831 (quoting KENT COMMENTARIES ON AMERICAN LAW, 13th ed. p. 461) (1916).

[15] 49 U. S. C. A. Sec. 302.

[16] See note 2 *supra.*

[17] 310 U. S. 534, 539, 60 Sup. Ct. 1059, 84 L. Ed. 1345, 1348 (1940).

[18] Kauper, *Federal Regulation of Motor Carriers* (1934) 33 MICH. L. REV. 239. At p. 241 the author points out that "the maximum hour provisions contained in bills proposing federal regulation . . . have their inception in considerations relating to public safety."

eliminate "labor conditions detrimental to the maintenance of a minimum standard of living necessary for health, efficiency and general well-being of workers." [19]

The solution of the problem in the *Magann* case, rather than that in the principal case, seems to be in conformity with the policy of each of these two inter-meshing statutes. The court granted plaintiff's request for minimum wages under Section 206 of the Fair Labor Standards Act, thus giving effect to the essential purpose of that Act. Congress, in Section 208 (a), had made provision for "carrying out the policy of this act by reaching . . . the objective of a universal minimum wage . . ." Then, by holding Section 207 (maximum hours and overtime) inapplicable because of the power of the I.C.C. to regulate as to maximum hours, the "safety" policy of the Motor Carrier Act was also fulfilled. Though perhaps not in the mind of the Supreme Court, the practical effect of the decision in the *American Trucking* case is also to guarantee the jurisdiction of the I.C.C. over those employees affecting safety, and yet to encroach as little as possible upon employee benefits under the Fair Labor Standards Act.[20]

D. S. T.

Fair Labor Standards Act—Right of Employer and Employee To Determine Regular Rate Upon Which To Base Overtime Computations.

For some time prior to the effective date of the Fair Labor Standards Act,[1] plaintiffs, employees within the scope of the Act, had been working 56 hours a week at 60c per hour. Since the Act would require compensation to be paid at one and one-half times the regular rate for every hour over 44, the defendant employer, two days before the effective date of the Act, gave the plaintiffs the alternative of continuing at the same rate for 40 hours a week only, or working at a reduced rate of 52½c per hour, with compensation for every hour

[19] 29 U. S. C. A. Sec. 202; Pickett v. Union Terminal Co., 33 F. Supp. 244, 247 (N. D. Texas 1940) (stating that this act was written in the interest of the employee, its philosophy being to guarantee a minimum wage); H. R. Rep. No. 2182, Apr. 21, 1938 (1 Prentice-Hall 1941 Labor Service pgph. 10,032).

[20] See note 17 *supra*, p. 546-7, 60 Sup Ct. 1066, 84 L. Ed. 1353 (that Congress granted no more "than the customary power to secure safety in view of the absence in the legislative history of the Act of any discussion of the desirability of giving the Commission broad and unusual powers over all employees.").

[1] 52 Stat. 1060, 29 U. S. C. Sec. 201 *et seq.* (Supp. 1939).